



February 1, 2002

Mr. Michael Jay Burns  
Supervising Attorney - Information Release  
Texas Workforce Commission  
101 East 15<sup>th</sup> Street  
Austin, Texas 78778-0001

OR2002-0480

Dear Mr. Burns:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158027.

The Texas Workforce Commission (the "commission") received a request for all documents contained in the file of a named individual. You claim that the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

We first note that under section 552.301(a) of the Government Code, a governmental body must request a decision from this office within ten business days in order to withhold information unless there has been a previous determination about whether the information falls within one of the exceptions to disclosure in the Public Information Act. You state that the commission received the request on September 5, 2001. You did not, however, request a decision from this office until November 21, 2001. You explain that the only information in the commission's possession that is responsive to the request is a claim for unemployment insurance ("UI"). You further explain that since 1986, it has been the commission's practice to rely on previous determinations to withhold this information without requesting a decision from this office. You contend that this practice is in accordance with the holding in *Rainbow Group, Limited v. Texas Employment Commission*, 897 S.W.2d 946 (Tex. App.—Austin 1995, writ denied). However, you do not cite, nor are we aware of, any previous determination from this office stating that unemployment insurance information is confidential and may be withheld without the necessity of requesting an opinion from this

office. *See, e.g.*, Open Records Decision No. 634 (stating that educational institutions may withhold information made confidential under the federal Family Educational Rights and Privacy Act of 1974 without necessity of requesting decision); *see also* Open Records Decision No. 673 (2001) (providing the criteria which must be met for a governmental body to rely on a ruling as a previous determination). Furthermore, *Rainbow* stands only for the proposition that the commission does not need to seek a decision regarding information obtained from employer reports. You have not explained that the submitted claim information was obtained only from employer reports. *See Rainbow*, 897 S.W.2d at 950 (stating that since requested information is obtainable only through employer reports, the commission was entitled to rely on previous determinations without requesting a further opinion). Consequently, we find that the commission was required to timely request a decision from this office regarding whether the responsive information is excepted from disclosure. The commission's failure to do so results in the presumption that the requested information is presumed to be public. *See Gov't Code* § 552.302. In order to overcome the presumption that the requested information is public, a governmental body must provide compelling reasons why the information should not be disclosed. *See Open Records Decision Nos.* 26 (1974), 150 (1977). The application of section 552.101 is such a compelling reason.

You contend that the submitted information is excepted from disclosure under section 552.101 in conjunction with federal regulations. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. In Open Records Decision No. 476 (1987), this office determined that the regulations found at section 603 of title 20 of the Code of Federal Regulations send a clear message that "claim information" in the files of a state unemployment compensation agency is to be disclosed only to a "receiving agency," as defined in the regulations, or to other specified parties. *See 20 C.F.R. §§ 603.1 et. seq.* "Claim information" means information regarding whether an individual is receiving, has received or has applied for unemployment compensation, as well as "[a]ny other information contained in the records of the State employment compensation agency which is needed by the requesting agency to verify eligibility for, and the amount of, benefits." 20 C.F.R. § 603.2(c)(1), (5).

This office also stated that "[a] federal statute or administrative regulation enacted pursuant to statutory authority can provide statutory confidentiality for purposes of section 3(a)(1) of the Open Records Act." Open Records Decision No. 476 at 5 (citing Open Records Decision Nos. 373 (1983); 226 (1979); *Johnson v. Wells*, 566 F.2d 1016 (5th Cir. 1978)). You state that the federal Social Security Act requires states to comply with the directives of the United States Department of Labor in administering state UI programs. You have submitted a copy of a Department of Labor directive (UI Program Letter No. 34-97), which specifies the conditions under which this information may be released. You advise that the requestor has not demonstrated that he is authorized to receive the UI information. Consequently, we agree

that the requested information is confidential and must be withheld under section 552.101 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Bates".

Kristen Bates  
Assistant Attorney General  
Open Records Division

KAB/seg

Ref: ID# 158027

Enc. Submitted documents

c: Mr. Robert Schleier, Jr.  
Schleier & Brown  
116 North Kilgore Street  
Kilgore, Texas 75662  
(w/o enclosures)